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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

GLOBE INTERNATIONAL, INC.,
Petitioner,

v.

KHALID KHAWAR,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

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PETITION FOR WRIT OF CERTIORARI

AMY D. HOGUE
KEVIN M. FONG
Counsel of Record
PILLSBURY MADISON & SUTRO LLP
235 Montgomery Street
Post Office Box 7880
San Francisco, CA 94120-7880
(415) 983-1270

ANTHONY M. GLASSMAN
GLASSMAN BROWNING & SALTSMAN INC.
360 N. Bedford Drive
Suite 204
Beverly Hills, CA 90210
(310) 278-5100
Attorneys for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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QUESTIONS PRESENTED

1. Where a media defendant makes an accurate report of allegations in a book by a best-selling author about a matter of utmost public concern, may a finding of actual malice be based on a court's own view that the book's allegations were "highly improbable" and therefore should have been investigated by the media defendant before reporting the book's allegations?

2. Where an individual is drawn into a public controversy, should that individual be deemed a public figure for the limited purpose of media reports about that controversy, regardless of whether the individual voluntarily invited comment and criticism by injecting himself into the controversy?

3. Are neutral and accurate reports of previously published matters of public concern entitled to an absolute privilege?*

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* The parties to the proceedings in the Supreme Court of the State of California are named in the title of this petition. Petitioner Globe International, Inc., has no parent or subsidiary companies, other than wholly owned subsidiaries.

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion and judgment of the Supreme Court of California is reported at 19 Cal. 4th 254 and, as modified on December 22, 1998, is printed in Appendix A. The order on denial of rehearing is printed in Appendix B.

JURISDICTION

The opinion and judgment of the Supreme Court of the State of California was initially filed and entered on November 2, 1998 and amended on December 22, 1998 (Appx. A), and its order denying rehearing was filed and entered on December 22, 1998 (Appx. B). This Court has jurisdiction pursuant to section 1257(a) of Title 28 of the United States Code.

CONSTITUTIONAL PROVISION INVOLVED

First Amendment, United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

Background. In November 1988, a book entitled *The Senator Must Die: The Murder of Robert F. Kennedy* was published by Roundtable Publishing, Inc. Appx. A, p. 2a. The book was authored by Robert Morrow, an established authority on assassination conspiracy; Morrow also wrote *Betrayal,* a *New York Times* best-seller about the assassination of President John F. Kennedy. *See* Reporter's Transcript on Appeal ("RT"), pp. 2047-2048; Appendix in Lieu of Clerk's Transcript on Appeal ("Appx. on Appeal"), pp. 1751-1880; Trial Exhibits ("Ex."), Ex. 251. Roundtable published 25,000 hardcover copies of Morrow's new conspiracy book in its first printing. *See* Appx. A, p. 12a.

The theory set forth in *The Senator Must Die* is that Robert Kennedy was assassinated by the Iranian Secret Police working in conjunction with organized crime. RT 1145; Ex. 576, pp. 2-3. The book alleged that Sirhan Sirhan did not fire the fatal shots, but was involved in the plot as a decoy. *Id.* According to Morrow, the true assassin was a man identified as "Ali Ahmand." Ex. 576, pp. 184-185. The book contained four photographs that appeared beneath the caption, "Photographs of Ali Ahmand." Ex. 576, pp. 272-273. These photographs depict respondent Khalid Iqbal Khawar ("Khawar") standing

on the podium near Senator Kennedy on the night of the assassination. *Id.*

The April 4, 1989 edition of *Globe,* a weekly newspaper published by petitioner Globe International, Inc. ("Globe"), contained an article on Morrow's book entitled, "Former CIA Agent Claims: Iranians Killed Bobby Kennedy for the Mafia." Ex. 503. The *Globe* article was accompanied by one of the photographs that had previously been published in the book, and the article noted that Morrow claimed that the real assassin was a man who called himself "Ali Ahmand." Ex. 503; Ex. 576, p. 272.

On August 31, 1989, Khawar filed suit in the Superior Court of the State of California, County of Los Angeles, alleging that the *Globe* article defamed him. Appx. on Appeal 1-41. The jury found that the *Globe* article was a neutral and accurate report of the Morrow book, but nonetheless awarded Khawar $1,175,000 in damages, including $500,000 in punitive damages. Appx. A, p. 5a. The Court of Appeal of the State of California affirmed, but thereafter the Supreme Court of the State of California granted Globe's petition for review. Appx. A, p. 6a.

The California Supreme Court opinion. The California Supreme Court affirmed the Court of Appeal on November 2, 1998. Appx. A. The California Supreme Court held that Globe acted with actual malice in republishing the Morrow book's accusation. Appx. A, p. 33a. The California Supreme Court cited *Harte-Hanks Communications v. Connaughton,* 491 U.S. 657 (1989), in stating that there is actual malice "'"where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports"' . . ., and the republisher failed to interview obvious witnesses who could have confirmed or disproved the allegations . . . or to consult

relevant documentary sources . . . ." Appx. A, pp. 27a-28a. The California Supreme Court then reasoned:

> There were, to say the least, obvious reasons to doubt the accuracy of the Morrow book's accusation that Khawar killed Kennedy . . . . In asserting that Khawar, and not Sirhan, had killed Kennedy, the Morrow book was making the highly improbable claim that results of the official investigation, Sirhan's trial, and this court's decision on Sirhan's appeal, were all fundamentally mistaken.
>
> Because there were obvious reasons to doubt the accuracy of the Morrow book's central claim, and because the claim was an inherently defamatory accusation against Khawar, the jury could properly conclude that Globe acted with actual malice in republishing that claim if it found also, as it impliedly did, that Globe failed to use readily available means to verify the accuracy of the claim by interviewing obvious witnesses who could have confirmed or disproved the allegations or by inspecting relevant documents or other evidence. (*Harte-Hanks Communications v. Connaughton, supra,* 491 U.S. 657, 682-684).

Appx. A, pp. 28a-29a.

The California Supreme Court also held that Khawar is a private figure because he had not "acquired sufficient media access in relation to the controversy surrounding the Kennedy assassination or the Morrow book to effectively counter the defamatory falsehoods in the Globe article." Appx. A, p. 11a. Finally, the California Supreme Court held that there is no neutral reportage privilege extending to reports regarding private figures. Appx. A, p. 24a.

On December 22, 1998, the California Supreme Court denied a petition for rehearing. Appx. B.

REASONS FOR GRANTING CERTIORARI

The California Supreme Court's opinion seriously threatens the right of the media to accurately report previously published allegations of public concern. The opinion imposes a duty to independently investigate before reporting a book's allegations; otherwise a media defendant faces the risk that a court may someday view the book's allegations as "highly improbable." At the very least, the opinion encourages plaintiffs to sue anyway, in the hope that a court can be persuaded that the book's allegations are "highly improbable."

The danger of this precedent is underscored in this case, where there was an accurate report of a best-selling author's allegations, and the subject matter was of utmost public concern. Petitioner Globe accurately reported a best-selling author's allegations that Robert Kennedy had been assassinated by the Iranian Secret Police, not Sirhan Sirhan. Yet, the California Supreme Court found actual malice based on its own assumption that the conviction of Sirhan Sirhan for the murder of Robert Kennedy was infallible and beyond public discussion, even though there is on-going controversy regarding Robert Kennedy's death.

This case also presents two additional issues of crucial importance to the First Amendment: (1) whether an individual drawn into a public controversy should be deemed a public figure for the limited purpose of media reports about that controversy—that is, an "involuntary public figure"—and, (2) whether neutral and accurate reports of previously published matters of public concern should be entitled to an absolute privilege, commonly known as a "neutral reportage" privilege. Both of these issues are squarely presented in this case, and offer this Court an opportunity to provide lower courts with much-needed

guidance as to the scope of First Amendment protection in these areas.

I. THE CALIFORNIA SUPREME COURT'S OPINION SERIOUSLY THREATENS THE RIGHT OF THE MEDIA TO ACCURATELY REPORT PREVIOUSLY PUBLISHED ALLEGATIONS OF PUBLIC CONCERN.

The newspaper article at issue in this case accurately reported allegations in a book by a best-selling author about a matter of utmost public concern—the assassination of Robert Kennedy. Nevertheless, the California Supreme Court upheld a finding of "actual malice," based on that court's own view that the book's allegations were "highly improbable" and therefore should have been investigated by the newspaper before reporting the book's allegations. The California Supreme Court's opinion seriously threatens the right of the media to accurately report previously published allegations of public concern.

In *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989), this Court outlined the parameters of the constitutional threshold of "actual malice"—that is, that a "false and defamatory statement is published with knowledge of falsity or a reckless disregard for the truth" (491 U.S. at 688):

> A "reckless disregard" for the truth, however, requires more than a departure from reasonably prudent conduct. "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." The standard is a subjective one—there must be sufficient evidence to permit the conclusion that the defendant actually had a "high degree of awareness of . . . probable falsity." As a result, failure to investigate before publishing, even when a reasonably

> prudent person would have done so, is not sufficient to establish reckless disregard. *In a case such as this involving the reporting of a third party's allegations, "recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports."*

491 U.S. at 688 (emphasis added; citations omitted).

The critical issue is whether a court may find "obvious reasons to doubt" a book's previously published allegations, and therefore impose a duty on a newspaper to investigate the book's allegations prior to reporting them, based solely on the court's own view that the book's allegations are "highly improbable." Here, the California Supreme Court finds that Globe should have investigated the Morrow book's allegations, because:

> There were, to say the least, obvious reasons to doubt the accuracy of the Morrow book's accusation that Khawar killed Kennedy . . . . In asserting that Khawar, and not Sirhan, had killed Kennedy, the Morrow book was making the highly improbable claim that results of the official investigation, Sirhan's trial, and this court's decision on Sirhan's appeal, were all fundamentally mistaken.

Appx. A, p. 28a.

In effect, the California Supreme Court has held that a reasonable person would have concluded that the allegations in the Morrow book were implausible. Such a "reasonable person" concept has no place in an "actual malice" analysis: "[F]ailure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." *Harte-Hanks*, 491 U.S. at 688. There are good reasons for this rule. Many important news stories that ultimately have been proven correct have initially been denounced as implausible or false. If the initial allegations are from a

responsible source and concern a matter of vital public interest, courts should not second-guess "plausibility."

Here, for example, there is undisputed evidence that prominent and credible individuals do not accept the "official" version of Robert Kennedy's death. Notably, in a 1983 book, Dr. Thomas Noguchi, the former Chief Medical Examiner of Los Angeles County who performed the Robert Kennedy autopsy, raised serious questions with respect to the assassination:

> Back at the Hotel Ambassador, another witness told police that he too had seen the girl in the white polka-dot dress run out of the hotel. But he added a troubling detail. A "dark complected" man had been running with her.
>
> Only one dark-complected man, Sirhan Sirhan, was in custody. Had an accomplice escaped?
>
> . . . .
>
> [S]cientific evidence . . ., and a host of witnesses who did not actually see Sirhan fire the fatal shot, all seemed to indicate there may have been a second gunman . . . .
>
> . . . .
>
> [T]he existence of a second gunman remains a possibility. Thus I have never said that Sirhan Sirhan killed Robert Kennedy.

Ex. 533, pp. 94, 107, 108. Questions about Robert Kennedy's death continue to be raised in public symposia throughout the country and in publications.[1] *See* Exs.

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[1] Indeed, Khawar referred below to a 1995 book by Dan E. Moldea noting that although Moldea concluded in 1994 that Sirhan was the sole assassin, Moldea's earlier investigations (in 1987) had led him to believe that

> [b]ecause of overwhelming quasi-official corroboration that two guns had been fired, this new evidence of a second gunman

519, 544; RT 2047, 2183-2187. The California Supreme Court erred, as a matter of law, in finding actual malice based on the court's own view that the Morrow book's allegations were "highly improbable." [2]

The California Supreme Court has created a dangerous precedent by imposing the risk upon a media defendant that a court may later view allegations as "highly improbable," even if those allegations are made by a best-selling author, are previously published, and are about a matter of utmost public concern. The ruling below allows the lower courts to find actual malice merely by characterizing allegations as "highly improbable"; it will necessarily "chill" the media from re-reporting allegations made in other publications. Media entities will be reluctant to take on the risk that a court may one day view even a previously published allegation as "highly improbable."

> nearly constituted conclusive proof . . . [A] second gun appeared to have been fired.

The Killing of Robert F. Kennedy, by Dan E. Moldea, p. 306.

[2] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), is instructive. In *Gertz*, the John Birch Society had accused Gertz of being part of a nationwide Communist conspiracy to discredit local police in order to make way for a national police force supporting a Communist dictatorship. 418 U.S. at 325-26. Most Americans and most courts no doubt would have deemed the existence of such a conspiracy to be "highly improbable." Yet, in its statement of the case, this Court discusssed with approval the lower court's ruling that there was no evidence of actual malice:

> There was no evidence that the managing director of [the John Birch Society magazine] knew of the falsity of the accusations made in the article. In fact, he knew nothing about [Gertz] except what he learned from the article. The [Court of Appeals] correctly noted that mere proof of failure to investigate, without more, cannot establish reckless disregard for the truth. Rather, the publisher must act with a "high degree of awareness of . . . probable falsity." The evidence in this case did not reveal that respondent had cause for such an awareness.

418 U.S. at 332 (citations omitted).

The change in the law effected by the California Supreme Court could literally change history. For example, when the *Washington Post* initially reported the Watergate allegations detailing the President's involvement with petty criminals, those allegations may have seemed "highly improbable" to many. Yet, those allegations were re-reported by virtually every news organization in the country. Under the California Supreme Court's rule, each of those news organizations would now face the risk of being found to have acted with "actual malice" for failing to investigate the *Washington Post's* allegations themselves before reporting on those allegations. That should not be the law.

Moreover, under the ruling below, once a person is convicted of murder (or any other crime), the right of the media to report on previously published doubts about that conviction virtually disappear. But convictions, even after appellate review, are not infallible. At the very least, the media should be free to report on a commentator's doubts about a conviction—such open, public discussion is an important part of our heritage. For example, in 1927, five years after the convictions of Sacco and Vanzetti, Felix Frankfurter wrote an extensive article in *The Atlantic Monthly* criticizing the trial and the convictions.[3] As might be expected, Frankfurter's criticism of the convictions attracted much attention at the time. Yet, under the erroneous reasoning of the ruling below, news organizations could not have reported on Frankfurter's allegations without first investigating those allegations themselves! Clearly, the ruling below, if left unreviewed, will also have a devastating impact upon public

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[3] Felix Frankfurter, "Case of Sacco and Vanzetti," *Atlantic Monthly* 139 (March 1927), 409-32; *see* Gerald Gunther, *Learned Hand: The Man and the Judge* (New York: Alfred A. Knopf 1994), 388-396.

discussion of criminal justice, even where (as here) there are continuing doubts and public concern.

II. AN INDIVIDUAL DRAWN INTO A PUBLIC CONTROVERSY SHOULD BE DEEMED A PUBLIC FIGURE FOR THE LIMITED PURPOSE OF MEDIA REPORTS ABOUT THAT CONTROVERSY.

This case also squarely presents the issue of whether an individual drawn into a public controversy should be deemed a public figure for the limited purpose of media reports about that controversy—that is, an "involuntary public figure."

This Court's opinion in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), contains language suggesting the possibility of an "involuntary public figure":

> In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself *or is drawn into a particular public controversy* and thereby becomes a public figure for a limited range of issues.

418 U.S. at 351 (emphasis added). Indeed, the California Supreme Court's opinion below recognizes that *Gertz* "has indicated that purposeful activity may not be essential for public figure characterization." Appx. A, p. 11a. However, the California Supreme Court goes on to hold:

> [A]ssuming a person may ever be accurately characterized as an *involuntary* public figure, we infer from the logic of *Gertz* that the high court would reserve this characterization for an individual who, despite never having voluntarily engaged the public's attention in an attempt to influence the outcome of a public controversy, nonetheless has acquired such public prominence in relation to the controversy as

> to permit media access sufficient to effectively counter media-published defamatory statements.
>
> We find in the record no substantial evidence that Khawar acquired sufficient media access in relation to the controversy surrounding the Kennedy assassination or the Morrow book to effectively counter the defamatory falsehoods in the Globe article.

Appx. A, p. 11a.

The California Supreme Court misconstrued *Gertz*. Once an individual is drawn into a paramount public controversy, the individual should be deemed a public figure for limited purposes because such individuals "*usually* enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy." *Gertz*, 418 U.S. at 344 (emphasis added). But there should be no requirement that a media defendant prove that the individual plaintiff had "substantial media access." Where an individual is drawn into an important public controversy, the individual should be deemed a public figure for the limited purpose of media reports about that controversy, regardless whether the individual has "substantial media access." [4]

Here, the publication of Morrow's book was itself an event of interest to the public. One court has observed, "the public interest in the assassination of Senator Kennedy and the ensuing investigation is great indeed." *Stone*

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[4] Indeed, *Gertz* itself makes a similar, related point:

> *Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption* that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them.

Gertz, 418 U.S. at 345 (emphasis added).

v. F.B.I., 727 F. Supp. 662 (D.D.C. 1990). Shortly after publication of Morrow's book, Pulitzer prize-winning author C. David Heyman wrote in his book, *A Woman Named Jackie:*

> As with the assassination of JFK, myriad theories surrounded the death of his younger brother. The most convincing theory regarding the RFK assassination was recently suggested by former CIA contract man Robert Morrow in *The Senator Must Die* . . . .

Ex. 515, p. 484; RT 1605, 2521. Thus, Khawar was thrust, albeit against his will, toward the center of a continuing controversy about Robert Kennedy's assassination. Such circumstances are described in the Restatement of Torts (Second):

> There are . . . individuals who have not sought publicity or consented to it, but through their own conduct or otherwise have become a legitimate subject of public interest. They have, in other words, become "news."

Restatement (2d) Torts (1977) section 652D, comment f; *see Dameron v. Washington Magazine, Inc.*, 779 F.2d 736, 741 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1141 (1986) ("Persons can become involved in public controversies and affairs without their consent or will").

This Court should resolve the issue of whether a person drawn into a public controversy may become an "involuntary public figure" and, if so, what the parameters of such an "involuntary public figure" might be. If this issue is left unresolved, the media will be chilled in reporting on legitimate subjects of public controversy.

III. NEUTRAL AND ACCURATE REPORTS OF PREVIOUSLY PUBLISHED MATTERS OF PUBLIC CONCERN SHOULD BE ENTITLED TO AN ABSOLUTE PRIVILEGE.

Finally, this case also presents the issue of whether neutral and accurate reports of previously published matters of public concern should be entitled to an absolute privilege, commonly known as a "neutral reportage" privilege.

This privilege, derived from the First Amendment, was first recognized by the Second Circuit in *Edwards v. National Audubon Society, Inc.*, 556 F.2d 113 (2d Cir. (1977), *cert. denied*, 434 U.S. 1002 (1977). In *Edwards, The New York Times* reported statements made by the National Audubon Society questioning the good faith of scientists who supported continued use of DDT. In reversing a libel judgment against *The New York Times*, the Second Circuit observed:

> What is newsworthy about such accusations is that they were made. We do not believe that the press may be required under the First Amendment to suppress newsworthy statements merely because it has serious doubts regarding their truth. Nor must the press take up cudgels against dubious charges in order to publish them without fear of liability for defamation. The public interest in being fully informed about controversies that often rage about sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them.

556 F.2d at 120 (citation omitted). Accordingly, a court applying a "neutral reportage" privilege focuses on the publisher's view of the accuracy of its report of the charges made by another, not the accuracy of the underlying charges themselves.

> [I]f we are to enjoy the blessings of a robust and unintimidated press, we must provide immunity from defamation suits where the journalist believes, reasonably and in good faith, that his report accurately conveys the charges made.

Edwards, 556 F.2d at 120.

The California Supreme Court correctly recognized in the opinion below that there is a split in the courts on the existence and scope of the "neutral reportage" privilege: "In other jurisdictions, some state and federal appellate courts have rejected the privilege entirely, while courts that have adopted it have disagreed as to its elements." [5] Appx. A, p. 18a (citations omitted). The California Supreme Court also noted that "[c]ommentators are similarly divided, with some arguing that the privilege is inconsistent with the United States Supreme Court's First Amendment jurisprudence and therefore should be rejected, and others endorsing the privilege in concept but taking differing positions about how it should be de-

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[5] Decisions recognizing a neutral reportage privilege include: *Price v. Viking Penguin Inc.*, 881 F.2d 1426 (8th Cir. 1989), *cert. denied*, 493 U.S. 1036 (1990); *Sunshine Sportswear & Electronics v. WSOC Tele., Inc.*, 738 F. Supp. 1499 (D.S.C. 1989); *Burns v. Times Argus*, 430 A.2d 773 (Vt. 1981); *Blair v. Palm Beach Newspapers*, 8 Med. L. Rep. 2028 (Fla. 5th Cir. 1982), *aff'd*, 444 So.2d 1131 (Fla. 4th Dist. Ct. App. 1984).

The intermediate courts in Illinois are split on the issue (*see Fogus v. Capital Cities Media, Inc.*, 444 N.E.2d 1100, 1102 (Ill. App. 1982)), and the Illinois Supreme Court has declined to rule upon the issue (*see Catalano v. Pechous*, 419 N.E.2d 350, 361 (Ill. 1980), *cert. denied*, 451 U.S. 911 (1981)).

Decisions rejecting a neutral reportage privilege include: *Dickey v. CBS, Inc.*, 588 F.2d 1221 (3d Cir. 1978), questioned in *Medico v. Time, Inc.*, 643 F.2d 134, 145 (3d Cir. 1981), *cert. denied*, 454 U.S. 836 (1981); *McCall v. Courier Journal & Louisville Times Co.*, 623 S.W.2d 882 (Ky. 1981); *Janklow v. Viking Press*, 378 N.W.2d 875 (S. Dak. 1985); *Postill v. Booth Newspapers, Inc.*, 325 N.W.2d 511 (Mich. App. 1982).

fined."[6] Appx. A, p. 18a. *See Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 660 n.1 (1989) (noting that the petitioner therein had abandoned the defense of neutral reportage, and that therefore the issue was not before the Court); *see also Harte-Hanks*, 491 U.S. at 694 (Blackmun, J., concurring).

Ultimately, the California Supreme Court held that " 'in California there is no neutral reportage privilege extending to reports regarding *private figures.*' " Appx. A, p. 24a (emphasis added). However, if (as discussed above) Khawar was a public figure for the limited purpose of media reports about the Morrow book's allegations, then the issue remains whether there should be a "neutral reportage" privilege and, if so, what the scope of the privilege might be. (Moreover, as the California Supreme Court acknowledged, there is a split of opinion as to whether the neutral reportage opinion should apply to

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[6] Commentators opposing a neutral reportage privilege include: Comment, *Edwards v. National Audubon Society, Inc.: A Constitutional Privilege to Republish Defamation Should Be Rejected* (1982) 33 Hastings L.J. 1203.

Commentators endorsing a neutral reportage privilege include: Note, *The Developing Privilege of Neutral Reportage* (1983) 69 Va. L. Rev. 853; Boasberg, *With Malice Toward None: A New Look at Defamatory Republication and Neutral Reportage* (1991) 13 Hastings Comm. & Ent. L.J. 455; Note, *The Newsworthiness Requirement of the Privilege of Neutral Reportage Is a Matter of Public Concern* (1996) 65 Fordham L. Rev. 789; Comment, *Neutral Reportage: Making Sense of Edwards v. National Audubon Society, Inc.* (1991) 20 Cap. U. L. Rev. 471; McCraw, *The Right to Republish Libel: Neutral Reportage and the Reasonable Reader* (1991) 25 Akron L. Rev. 335; Comment, *Price v. Viking Penguin, Inc.: The Neutral Reportage Privilege and Robust, Wide Open Debate* (1990) 75 Minn. L. Rev. 157; Comment, *Restricting the First Amendment Right to Republish Defamatory Statements* (1981) 50 Geo. L.J. 1495.

reports of an accusation made by a public figure regarding a private figure.)[7]

Resolving the issues surrounding the "neutral reportage" privilege is of crucial importance to the First Amendment. The time has come to resolve the split in the courts on the existence of the "neutral reportage" privilege. Until this conflict is resolved, the media's First Amendment protection will depend solely on the state in which a plaintiff is located. This conflict should be resolved.

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[7] The California Supreme Court stated:

> Some commentators have argued that the privilege should apply to a published report of an accusation that a public figure has made against a private figure because "the public has a greater interest in knowing what its public figures are saying than it does in protecting private figures from accusations by public figures." . . . Under this view, the neutral reportage privilege would protect the Globe article, even though it reported a false and defamatory accusation against a private figure (that is, Khawar), if the person who made the original accusation (that is, Morrow) was a public figure.
>
> Because we do not accept this view of the neutral reportage privilege, we do not decide whether Morrow was a public figure. We find more persuasive the arguments of other commentators that republication of accusations made against private figures are never protected by the neutral reportage privilege, whether or not the person who made the original accusation was a public figure.

Appx. A, pp. 21a-22a; *see* Appx. A, pp. 20a-21a, n.4 (discussing state court decisions expanding privilege to include defamation of private figures).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

AMY D. HOGUE
KEVIN M. FONG
Counsel of Record
PILLSBURY MADISON & SUTRO LLP
235 Montgomery Street
Post Office Box 7880
San Francisco, CA 94120-7880
(415) 983-1270

ANTHONY M. GLASSMAN
GLASSMAN BROWNING &
SALTSMAN INC.
360 N. Bedford Drive
Suite 204
Beverly Hills, CA 90210
(310) 278-5100
Attorneys for Petitioner